

same party in trust for Cordelia M. Hollins, and this partition was by a deed executed interchangeably by Dugan and wife, McKim, the trustee, Rebecca and Cordelia M. Hollins, carried into effect; the parties respectively conveying each to the other according to the assignment of the commissioners appointed to make the partition. It was the property in fact which was assigned to Frederick James Dugan by this partition, which it was the object of the supplemental proceedings in the case of Gittings and others, to render responsible for the payment of the rents and profits decreed to be paid them.

So far as this item of claim is concerned, it appears to me, the merits as well as the law of the case, are with the complainant. The rule at common law is well settled, that upon a partition between coparceners there is an implied warranty that if either loses any of his share by eviction on account of defect of title in the ancestor, the party evicted may enter upon the others and defeat the partition, or by proper proceedings may obtain recompense for the part lost. The case of *Morris vs. Harris*, 9 *Gill*, 20, shows this to be the common law doctrine, though in that case the rule was not applied, the implied warranty being controlled by the express covenants between the parties.

In this case, however, there are no covenants in the deed executed by these parties which can control the covenant arising from legal implication, and I can see no reason, in justice or law, why the complainant should not be entitled to call upon the parties, between whom and himself the partition was made, for contribution. Undoubtedly, upon this point, the equity of the case is with him, and, I am of opinion, he has a right in a Court of Chancery to call upon the other parties to contribute their fair proportions of the money paid by him in discharge of the decree in favor of Gittings and others, mentioned in the proceedings.

By the last clause of the will of Cumberland Dugan, he bequeathed all the rest and residue of his property, real, personal and mixed, partly by specific description, and partly in general terms, to his four children, Rebecca Hollins, Cordelia Margaret